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Geneva B. Scruggs Community Healthcare Center, Inc. and CSEA, Inc., Local 1000, AFSCME, AFL-CIO, CSEA Local 713. Case 3-CA-22591

September 27, 2002

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On February 15, 2001, the Board issued a Decision and Order,¹ which, among other things, ordered the Respondent to make whole certain of its unit employees for losses resulting from its unlawful failure to pay accrued vacation pay and grant pay in lieu of accrued personal leave to unit employees upon their separation from the Respondent's employment, as required by the Respondent's collective-bargaining agreement with the Union.

On February 20, 2002, the United States of Appeals for the Second Circuit entered its judgment enforcing the Board's Order in full.²

A controversy having arisen over the amount of backpay due the affected employees, on May 24, 2002, the Acting Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated July 25, 2002, the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by August 1, 2002, summary judgment would be sought. On July 31, 2002, the Respondent's counsel requested an extension of time to submit a response to the compliance specification. On August 1, 2002, the General Counsel granted the Respondent's request, and further advised the Respondent that if an answer was not received by close of business August 6, 2002, he would file a Motion for Summary Judgment with the Board.

By letter and facsimile dated August 6, 2002, the Respondent's counsel replied that "in lieu of a formal answer to the Compliance Specification . . .," the Respon-

dent had instructed him to state that the Respondent "neither admits nor denies the allegations set forth in the Compliance Specification." This letter then offered to settle the matter by agreeing to pay the \$12,014.68 set forth in the compliance specification as the amount of backpay owed for outstanding personal leave accruals. The letter, however, further stated the counsel's "understanding" that the issue of backpay owed for unpaid accrued vacation "is being addressed by the Department of Labor."

On August 13, 2002, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On August 16, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. As described above, instead of filing an answer, the Respondent has submitted a letter asserting that it neither admits nor denies the allegations of the compliance specification, and offering to "settle" those allegations by paying an amount covering only the alleged unpaid accrued personal leave, without any payment for the unpaid accrued vacation. The General Counsel's motion contends that the total amount owed by the Respondent for compliance with the Board's Order, as set forth in the compliance specification, is \$38,788.30, and that, therefore, the Respondent's settlement offer is inadequate. The adequacy of the Respondent's settlement offer, however, is not an issue presented to us in this proceeding. Rather, the significant fact is that the Respondent has failed to file an answer to the compliance specification.

¹ 333 NLRB No. 48.

² No. 02-4013.

In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the employees is as stated in the compliance specification, and we will order payment by the Respondent of those amounts to the employees, plus interest accrued on the amounts to the date of payment, minus the taxes and withholding required by Federal and State laws.³

ORDER

The National Labor Relations Board orders that the Respondent, Geneva B. Scruggs Community Healthcare Center, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendix, by paying them the amounts opposite their names, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax and other withholdings required by Federal and state laws. Summarizing these amounts, the Respondent is obligated to pay employees \$26,773.62 in unpaid accrued vacation pay and \$12,014.68 in unpaid accrued personal leave pay, for a total of \$38,788.30 in backpay.

Employee	Vacation	Personal Leave	Total
Alexander, Rowland	\$138.89		\$138.89
Armstead, Sharon	90.56	\$138.96	229.52
Barnes, Cheryl	202.12		202.12
Barrett, Annie Mae	1,519.52		1,519.52
Bell, William	910.19		910.19
Beverly, Earlene	426.46	66.08	492.54
Beville, Helen	444.14		444.14
Black, Celeste	266.63	51.63	318.26
Boggan, Afril	648.58	198.24	846.82
Booker, James	108.21		108.21
Boyd, Darius	455.87	198.24	654.11
Boyd, Diane	53.79	53.52	107.31
Brady, Barbara	60.43	188.48	248.91
Brown, Alberta		132.16	132.16
Brown, Pearlina		285.44	285.44
Burrow, Ina	81.28		81.28
Butcher, Betty	455.83		455.83

³ The compliance specification states that claims for the unpaid vacation pay were also filed with the New York State Department of Labor. The compliance specification provides that the amount of unpaid vacation pay owing pursuant to the Board's court-enforced Order is to be offset by any payments bargaining unit employees receive from the New York State Department of Labor.

Caldwell, Carol		158.08	158.08
Carr, Tracy	540.37	264.32	804.69
Carter, Raymona		198.24	198.24
Chandler, Lisa		198.24	198.24
Clark, Darryl	370.72	173.94	544.66
Coleman, Eugene		192.00	192.00
Copeland, Addison	196.48		196.48
Cox, Rhonda	98.96		98.96
Craig, Shirley	558.62	132.16	690.78
Craig, Terra	355.01	198.24	553.25
Dent, Evelyn	536.40	198.24	734.64
Dixon, Gary	507.16	198.24	705.40
Donovan, Satora	409.09		409.09
Ferguson, Dorothy	228.22		228.22
Foster, Veronica	278.20	198.24	476.44
Goodson, Michelle		198.24	198.24
Gray, Gordon	29.24		82.76
Gregory, Carolyn	43.51	210.35	253.86
Hannah, William	204.46		204.46
Harris, Johnnie	11.23	181.72	192.95
Hunter, Ali		66.08	66.08
Hunter, Michelle	228.22	132.16	360.38
Jackson, Latasha	109.78	105.32	215.10
Jamison, Madeline		76.57	76.57
Johnson, Eric	295.33		295.33
Johnson, Mark	113.74	264.32	378.06
Johnson, Thelma		181.80	181.80
Jones, Cathy	469.32	290.88	760.20
Jones, Lynn	396.50	110.01	506.51
Keith, Beatrice	38.64	77.16	115.80
Kimble, Darlene	278.94	99.12	378.06
Lattimore, Christina	140.67	84.67	225.34
Lawrence, Dennis	162.03		162.03
Liggins, James	162.14	132.16	294.30
Maldonado, Javier	232.85	132.16	365.01
McCabe, Patricia	703.49	92.64	796.13
McClinton, David	289.56		289.56
McCutcheon, Wilson	432.74	198.24	630.88
McDuffie, Jacqueline		77.16	77.16
Middlebrooks, Jordan	275.45		275.45
Minns, Reaina		264.32	264.32
Moore, Jenneice	92.89		92.89
Moore, Sylvia	86.07	33.04	119.11
Oliver, Hayward		33.04	33.04

Overton, Beverly	547.47	264.32	811.79
Parker, Karen	727.52	204.24	931.76
Patton, Adrienne	185.18		185.18
Perkins, Sonya		109.08	109.08
Pruitt, Veronica	92.89		92.89
Quarles, Candice	469.32	145.44	614.76
Reid, Marquel F.	130.18	109.45	239.63
Rice, Alfred	371.47		371.47
Rice, Christine	42.87	99.12	141.99
Riddick, Cammie	44.77		44.77
Roberson, Adrian	143.81		143.81
Ronbinson, Marion	202.87		202.87
Rosier, Michele		247.38	247.38
Salter, Cynthia	537.78	43.38	581.16
Sanders, Andre	202.12	198.24	400.36
Scott, Gerard	305.97		305.97
Short, Robbin	96.06	198.24	294.30
Smith, DeMone	232.09	134.40	366.49
Smith, Lawrence	500.46	118.40	618.86
Smith, Mary	681.54	177.60	859.14
Speight, Wilbert	278.20	229.22	507.42
Steward, Marian	79.96	66.08	146.04
Stroud, Deandrea	444.47		444.47
Swindle, Janise		92.64	92.64
Swindle, LaToya		44.00	44.00
Tate, Veronica	278.03	99.12	377.15
Thomas, Patty		277.92	277.92
Thompson, Martin-	539.58	145.44	685.02
Truitt, Karen	127.73	90.48	218.21
Tubbs., Sophia	360.38		360.38
Wallace, Sharon	498.82	198.24	697.06
Warford, Evett	523.28		523.28
Washington, Marjorie	1,199.79	145.44	1,345.23
Weary, Angela	115.74		115.74
White, James	344.91	177.60	522.51
Wideman, Carolyn		71.36	71.36
Williams, Anthony	208.33		208.33

Woods, Michael	70.27		70.27
Wright, Jacquelyn	127.73	90.48	218.21
Young, Josephine	\$140.12	277.92	418.04

CHCC EMPLOYEES

	Vacation	Personal Leave	Total
Chestnut, Betrina	\$79.72	\$109.08	\$188.80
Collins, Victor	306.97	109.08	416.05
Costley, Susan		290.88	290.88
Escalara, Lisa		36.36	36.36
Guiher, Patricia	300.24	218.16	518.40
Moss, Bridget	299.97	181.80	481.77
Owens, Toni	59.99	218.16	278.15
Patterson, Duvonne	305.97	109.08	415.05
TOTAL	\$26,773.62	\$12,014.68	\$38,788.30

Dated, Washington, D.C. September 27, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD